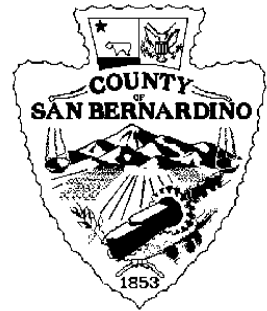


NEWS

From Supervisor Bill Postmus First District, San Bernardino County



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POSTMUS VOWS TO FIGHT 'ILLEGAL' STATE FIRE TAX

OAK HILLS – San Bernardino County First District Supervisor Bill Postmus announced today that he will urge the Board of Supervisors to order that documents be filed with the Superior Court in Sacramento challenging a new state fire protection fee scheduled to be imposed later this year.

Speaking at a news-media briefing at County Fire Station 40 in Oak Hills – one of the areas affected by the fee – Postmus said that the California Department of Forestry and Fire Protection fee, created by a majority-vote passage of Senate Bill 1049 last year, is actually a tax that required approval of at least two-thirds of the Legislature for adoption.

“Because there is no direct benefit or service tied to this so-called fee, I believe it is a tax,” Postmus said. “This tax was improperly imposed by the Legislature and signed by former Governor Gray Davis the day after he was voted out of office. Its purpose is simply to plug a hole in the State Budget to make up for deficit spending. It’s not fair to charge our residents for irresponsible fiscal management by the state, and we’re not going to stand for it.”

Senate Bill 1049 imposes a \$35-per-year fee on each privately owned parcel of property located within a State Responsibility Fire Area. This year, the first year of its collection, the amount collected would be \$70 per parcel. In San Bernardino County, approximately 125,010 parcels would be affected, representing a tax burden of \$8,750,000. First District communities affected include Phelan, Pinon Hills, Wrightwood, Oak Hills, Summit Valley, Lucerne Valley, the Morongo Basin, and portions of Hesperia and Apple Valley.

The legislation calls on counties to collect the fee in the “same manner and at the same time as secured property taxes.” The State Fire Fee is purportedly to cover the costs of the fire prevention and suppression services provided by the State to the properties in State Responsibility areas. Because the legislation requires counties to collect the fee, a recent lawsuit filed by the California Farm Bureau Federation names affected counties

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as defendants. The Farm Bureau alleges that the fee is both an invalidly adopted tax, pursuant to the provisions of Proposition 13, and an improperly adopted fee, pursuant to the provisions of Proposition 218. The Plaintiffs' motion seeking a ruling on the validity of the fee will be considered by the Court on July 30.

Supervisor Postmus will ask his colleagues on Tuesday to join him in directing the County Counsel's Office to file documents with the Superior Court supporting the Farm Bureau's contention that the so-called fee is, in fact, an illegal tax.

By definition, a "tax" is a charge imposed where the amount required to be paid by an individual or entity is not related to the benefit received from the collection of the charge. For example, the amount of income taxes required to be paid by a specific taxpayer is related to the income and deductions of that taxpayer, not to the amount of services provided to that taxpayer from the tax receipts. Likewise, property tax is related to the assessed value of the property upon which the property tax is imposed, not on the services provided to that property or to the owner of that property.

In contrast, a "fee" is a charge imposed where the amount required to be paid by an individual or entity is related to the specific benefit received from the collection of the charge. A fee cannot exceed the cost of providing a benefit or service.

If the Board concurs in the request of Supervisor Postmus, the County Counsel's Office will file a document on behalf of the County stating that this matter is one which must be resolved as soon as possible, given that the State and all of the Counties will be expending significant resources to place the fee in question on the property tax bill and to collect it, in addition to the concern over the impact of the fee on property owners.

The County would base its conclusion regarding the apparent invalidity of the fee on the fact that it appears that pursuant to the provisions of Proposition 13, the State Fire Fee is a disguised special tax that was not adopted by the required two-thirds majority vote of the Senate and Assembly.

Postmus said that the flat \$35-per-parcel nature of the state fire fee does not appear to satisfy the legal requirement that a fee "bear a fair and reasonable relationship" to the fire suppression benefits provided to the respective parcels. The fee does not take into account the size of the parcel, the level of improvements present on the parcel, the location of the parcel as to relative fire danger, the nature of the vegetation on the parcel (e.g., forested versus grass lands), or the nature of the terrain (e.g., steep slopes versus flat land).

The apparent failure of the fee to "bear a fair and reasonable relationship" to the fire suppression benefits provided to the respective parcels is made even more glaring,

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given that SB 1049 itself makes a finding that:

“It is necessary to impose a fee based upon the reasonable value of the specific benefit received by landowners within state responsibility area. Furthermore, the presence of homes and other structure on a given parcel, and the size of the parcel, constitute a reasonable relationship to fire prevention and suppression benefits received.”

The State Fire Fee is allegedly imposed to recover the costs of "fire suppression activities." Given the seemingly vastly different costs of providing fire suppression services to the differing types of parcels, it is difficult to understand how the flat \$35 per parcel fee can be found to "bear a fair or reasonable relationship" to the benefits of the fire suppression provided to the various property owners within the State fire responsibility area, Postmus said.

Supervisor Postmus said that his opposition to the fee should not be viewed as a criticism of the California Department of Forestry and Fire Protection. "This is simply an effort to defend the rights of the taxpayers of this county," Postmus said.